No. 283

Supreme Court of the United States

JESSE K. B. REA and
MRS. ELIZABETH REA PREIS.

versus

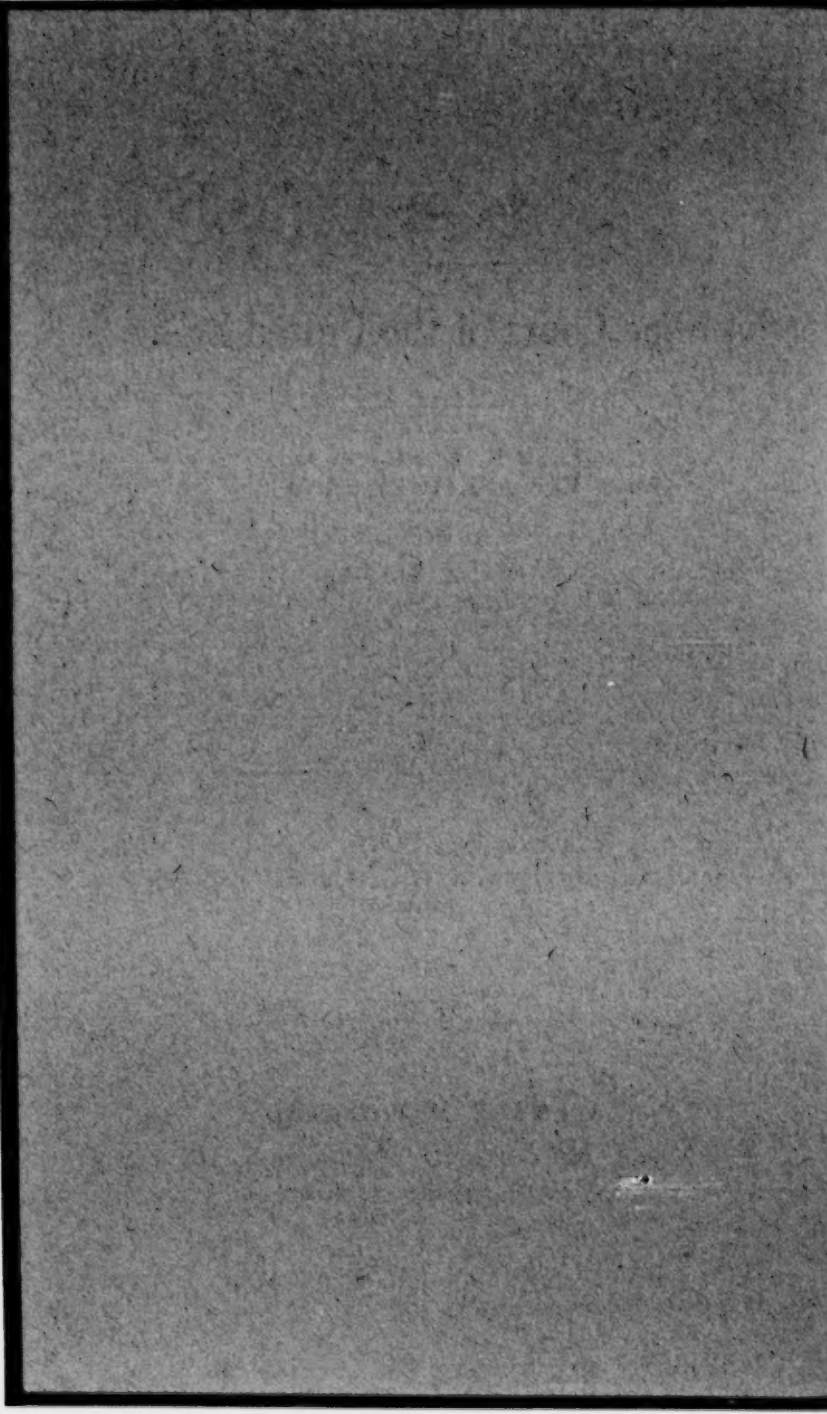
WILLIAM J. BEGNAUD, SPECIAL AGENT, AND
STANDARD HOMESTEAD ASSOCIATION
IN LIQUIDATION

On Application for Writ of Certiorari to the Supreme Court of the State of Louisiana.

OPPOSITION BRIEF ON BEHALF OF RESPONDENT LIQUIDATOR.

HARRY GAMBLE,
Attorney for Respondent.

MAURER PRINTING CO., INC., NEW ORLEANS



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To the Honorable Supreme Court of the United States:

I.
STATEMENT OF THE CASE

The case is well stated by the Commissioner. See pages 30, 31, 32 of Transcript of Record filed by the petitioners for the writ.

The Commissioner is a lawyer appointed for six years, to whom the Judges of the Civil District Court of

New Orleans may refer the taking of testimony, who is directed to find the facts, to discuss the law applicable, and to recommend judgment. The Commissioner in this case is a mature and competent lawyer of several years experience; of such competence that his findings may be regarded as of equal authority with those of the Civil District Judges.

The claims of the petitioners to be paid the full face value of their shares in the liquidating homestead association on the authority of the statutory provisions set out by petitioners in their brief, out of funds set aside or to be set aside by the direction of such statutes, to meet demands of withdrawing stockholders, was recommended to be rejected on the finding of fact that no funds were ever set aside by the directors for such purpose, and conclusions of law as fixed by the State jurisprudence for many years past, that the failure to set up such funds destroyed any preference claim; since such preferences in Louisiana are not of equitable origin and the statute does not authorize preference or lien on the general assets of a liquidating association in favor of a withdrawing stockholder. Tr. 38, 39, 40.

The findings and recommendations of the Commissioner were adopted by the District Judge and judgment was entered dismissing the preference claim of petitioners. Tr. 46.

This judgment was affirmed by the Supreme Court of Louisiana for the reason (Tr. 186):

> **"It is sufficient to say that the failure of the homestead association to pay the claims before going into liquidation did not make the appellants preferred creditors of the Association in Liquidation. No fund was set aside or dedicated to the payment of these claims. In Louisiana, no claim**

is secured by a lien unless a lien to secure the class of claims to which it belongs, has been created by statute." (Citing list of early Louisiana decisions, continuing to this day.) "There is no statute declaring the appellants to be preferred creditors of the association in liquidation, or giving them a lien to secure the payment of their claims upon the assets of the association in liquidation."

II.

ARGUMENT

The writ applied for can be granted only when the final judgment has been rendered by the Supreme Court where is drawn in question the validity of State statute on the ground of its being repugnant to the Constitution, and the decision is in favor of its validity.

It is true enough that a Louisiana homestead statute is attempted to be drawn in question; but the decision of the Louisiana Court rests on the long interpreted law of the State that no lien exists unless there is an existing fund imputable to the satisfaction of such lien or, in other words, not only a statute authorizing the establishment of such a fund, but the establishment of the fund in fact. The failure to so establish the fund, whatever the cause, whether acting in defiance of a statute authorizing the establishment, or in compliance with an unconstitutional statute relieving them of that duty, is the decisive question.

Since the long settled law of this State is that a preference fund can only be set up by statute, the question is not whether the directors in this case were negligent or mistaken in respect to any statute authorizing a fund, but whether there was ever a fund. If not, it would be legislation for the Courts to create one.

No federal question is involved in the State Court decision.

It is therefore respectfully submitted that the case is not a proper one for review by certiorari in this Court, and the petition for a writ should be denied.

Respectfully submitted,

HARRY P. GAMBLE,
Attorney for Respondent.

Dated November 19, 1945.